

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA

**STANDING ORDER NO. 2005-4**

**SEALED DOCUMENTS**

The following procedures govern documents under seal in criminal and civil cases in this Court.

- (a) General. A document (including a motion or other pleading) may be filed or placed under seal only if permitted by order of the Court. Portions of a document cannot be filed or placed under seal—only the entire document may be sealed. A sealed document is a document to which access other than by the Court or authorized Court personnel is prohibited or restricted. The Clerk must not otherwise disclose any sealed document except upon order of the Court.
- (b) Format. Any sealed document must be submitted to the Clerk clearly labeled “SEALED.”
- (c) Motion to Seal. To obtain an order allowing a document to be filed or placed under seal, a party must file an unsealed written motion containing—
  - (1) a non-confidential description of the document to be sealed;
  - (2) the non-confidential reasons why sealing is necessary, including the reasons why alternatives to sealing are inadequate; and
  - (3) the duration for which sealing is requested.

The party must also submit to the Court at the same time a proposed unsealed order granting the motion, which order must contain findings setting forth the matters contained in (1), (2), and (3) above.

The motion to seal must be accompanied by the document that is to be placed under seal, if it has not already been submitted. The document will be kept under seal by the Clerk temporarily pending a decision by the Court on the motion to seal. If the motion to seal is denied, the document will be returned by the Clerk to the party submitting it, unless the Court orders otherwise.

- (d) Public Notice of Motion to Seal. Any motion requesting an order allowing a document to be filed under seal must be docketed in such a way to give public notice of its nature as a motion to seal.
- (e) Public Notice of Sealing. The filing of a document under seal must be docketed in such a way as to give public notice that the document is filed under seal.
- (f) Objection to Sealing. Any party or nonparty may file an objection to any motion to seal or to the sealing of any document or may file a motion to unseal a document previously sealed.
- (g) Agreement by Parties. These provisions do not limit the ability of the parties by a confidentiality agreement or otherwise to restrict access to documents that are not filed with the court. No confidentiality agreement or other agreement of the parties, however, will allow the filing of sealed documents without adherence to these provisions. A separate motion must be filed in each instance that a document is to be filed under seal.
- (h) Unsealing. Unless there is a Court order to the contrary, the Clerk will unseal the following sealed documents when indicated—
  - (1) Search warrant—after the search is executed and the warrant is returned to the Clerk;
  - (2) Arrest warrant—after the arrest is made;
  - (3) Indictment—30 days after return or when all defendants named are in custody or have been summoned, whichever is the earliest. In the event a defendant receives an initial appearance before the indictment is unsealed and the government desires that the indictment remain sealed as to other defendants, the government is responsible for submitting reasonably in advance of the initial appearance to the magistrate judge for approval an appropriately redacted indictment for disclosure to the defendant and to the public;
  - (4) Criminal complaint—30 days after issuance or when all defendants named are in custody or have been summoned, whichever is the earliest; and

- (5) Any other documents—when the case is closed and the time for appeal has past.

Whenever a document is unsealed, any related order or motion under seal will be unsealed, unless the Court orders otherwise. In criminal cases, each defendant must be provided with a copy of the charges against that defendant (with other portions redacted, if necessary), even if the indictment or complaint is otherwise sealed.

- (i) Extension of Sealing. In order to extend the period of time for which a document is to be sealed, an order of the Court must be obtained using the procedures set forth in this Standing Order.
- (j) Sealed Case. No case may be sealed in its entirety except by order of the Court for cause shown, and after written motion conforming to these provisions.
- (k) Exceptions. No motion or order is required for the filing under seal of the following—
  - (1) An unredacted version of a document or a reference list containing personal data identifiers, in compliance with the Rules of Court or the E-Government Act;
  - (2) An ex parte motion, under circumstances where such ex parte application is permitted; and
  - (3) Presentence investigation reports, pretrial services reports, psychiatric or psychological evaluations in criminal cases, affidavits submitted in support of a motion for in forma pauperis status, or other documents required by law to be filed under seal.
- (l) Prior Order. This Standing Order supercedes the prior Standing Order relating to sealed documents entered December 19, 1997.

#### Commentary

This Standing Order describes the procedures to follow in criminal and civil cases with relation to sealed documents, including pleadings, motions, exhibits, and other material.



Case law protects generally the right of public access to documents filed in court, both under the First Amendment and the common law. See, e.g., *Va. Dep 't of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004).

Questions relating to sealed documents are presented in varying circumstances. For example, a party to a case may desire to file an exhibit to a brief containing confidential business information that has been disclosed to the opposing party under an agreement of confidentiality, but which the parties do not wish the public to see. The procedure to be followed is to file a motion not under seal that describes in a non-confidential way the document that the party desires to file under seal (in this hypothetical example, the exhibit). The motion must also state, in a non-confidential way, the reasons why sealing is requested (in this case, the fact that the exhibit contains confidential trade secrets whose disclosure would be harmful to the business of the party) and why alternatives to sealing are inadequate. Finally, the motion must also state the length of time that the party desires the document to be sealed. The motion must be accompanied by the document desired to be sealed (the exhibit, in this example) for review by the presiding judge, as well as a proposed unsealed order allowing the document to be sealed, which order recites the necessary findings.

Often the parties to a case will enter into a confidentiality agreement that provides that certain information exchanged between them in the course of discovery will remain confidential. The procedures described in this Standing Order do not affect the ability of the parties to enter into such an agreement. However, the parties cannot agree to the sealing of documents filed in court without following the mandatory procedures set forth in this Standing Order.

In other words, the parties cannot seal documents filed in Court merely by agreement or by labeling them "sealed."

There are certain exceptions to the rule that any document to be sealed must be accompanied by a nonsealed motion. Where the sealed document is a unredacted version of a document required to be redacted by the Rules of Court or the E-Government Act, or a reference list of personal data identifiers, then no motion or order is required. Like all sealed documents, however, the unredacted version or the reference list must be clearly labeled "SEALED."

Circumstances sometime permit an ex parte motion to the Court. For example, where there is a need for confidentiality, a criminal defendant may file an ex parte sealed motion seeking an order authorizing specified investigative, expert, or other services at public expense. See 18 U.S.C. § 3006A(e)(1) (Criminal Justice Act); 18 U.S.C. § 3599(f) (capital cases, including capital habeas cases). No unsealed motion or order is required. The motion must be clearly labeled "EX PARTE AND SEALED."

This Standing Order provides that unless the Court orders otherwise, all documents in a case will be unsealed at the conclusion of the case. The Standing Order does not flatly prohibit the continued sealing of a document, but leaves that decision to the presiding judge. As an alternative, the judge may order a sealed document in paper form returned to the party submitting it at the conclusion of the case. If a document is ordered sealed for a particular period of time, the period may be extended by a later order, obtained by following the procedures set forth.

*Adopted March 14, 2005. Amendment adopted December 10, 2007, amending section (h)(3), adding second sentence thereof.*